

No. 15,085.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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TWENTIETH CENTURY DELIVERY SERVICE, INC.,  
*Appellant,*

*vs.*

ST. PAUL FIRE AND MARINE INSURANCE COMPANY, a  
corporation,

*Appellee.*

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PETITION FOR MODIFICATION OF OPINION.

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FILED

FEB 20 1957

PAUL P. O'BRIEN, C



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## PETITION FOR MODIFICATION OF OPINION.

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This Honorable Court by its opinion filed January 24, 1957, reversed the judgment previously entered in the United States District Court for the Southern District of California against Appellant, Twentieth Century Delivery Service, Inc.

It is respectfully submitted the Court erred in concluding that Twentieth Century Delivery Service, Inc. had tendered to Appellee, St. Paul Fire and Marine Insurance Company the sum of One Hundred Twenty-Two Dollars and Fifty Cents (\$122.50) covering the limited valuation of the shipment in question (Opinion p. 2).

The tender of payment was made by the co-defendant Trans-World Airlines, Inc. on January 7, 1955, and rejected by St. Paul Fire and Marine Insurance Company

on January 10, 1955 [Tr. pp. 42]. The answers to the amended complaint of both Trans-World Airlines, Inc., and Twentieth Century Delivery Service, Inc. denied any liability whatsoever to the plaintiff [Tr. pp. 19, 27].

Appellee maintains it is entitled to at least judgment in its favor and against Twentieth Century Delivery Service of One Hundred and Twenty-Two Dollars and Fifty Cents (\$122.50) together with its costs of suit.

It is requested the Court's opinion be modified accordingly.

Respectfully submitted,

LILLICK, GEARY, McHOSE, ROETHKE &  
MYERS,

GORDON K. WRIGHT,

By GORDON K. WRIGHT,

*Attorneys for St. Paul Fire and Marine  
Insurance Company.*

### **Certificate of Counsel.**

I, Gordon K. Wright, of counsel for appellee in the above entitled action, hereby certify that the foregoing Petition for Modification of Opinion in this case is presented in good faith and not for delay, and in my opinion is well-founded in law and in fact and proper to be filed herein.

GORDON K. WRIGHT,

*Attorney for Appellee.*